

## REMARKS

Claims 1-5, 8-12 and 14-23 are pending in the present application. Applicants respectfully request reconsideration of the present claims in view of the following remarks.

### I. Prior Art Rejections:

Rejection of Previously Presented Claims 1-5, 8-12 and 14-23 Under 35 U.S.C. §103(a) In View of U.S. Patent No. 6,890,889 (Wichert) Further In View of U.S. Patent No. 6,924,250 (Cornes), U.S. Patent No. 5,620,678 (Burke), U.S. Patent No. 5,704,961 (Hudson) and U.S. Patent Application Publication No. 2001/0051591 (Ferrett)<sup>1</sup>

Previously presented claims 1-5, 8-12 and 14-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable in view of (1) U.S. Patent No. 6,890,889 issued to Wichert et al. (hereinafter, "Wichert"), further in view of (2) U.S. Patent No. 6,924,250 issued to Cornes (hereinafter, "Cornes"), (3) U.S. Patent No. 5,620,678 issued to Burke (hereinafter, "Burke"), (4) U.S. Patent No. 5,704,961 issued to Hudson (hereinafter, "Hudson"), and (5) U.S. Patent Application Publication No. 2001/0051591 to Ferrett et al. (hereinafter, "Ferrett"). This rejection is respectfully traversed for the reasons given in Applicants' June 15, 2011 Request for Reconsideration, as well as the reasons provided below.

For at least the reasons given in Applicants' June 15, 2011 Request for Reconsideration, Applicants maintain the following positions:

(1) the teaching of Wichert specifically instructs one skilled in the art to formulate herbicidal compositions containing mesotrione so as to have a weight ratio of urea ammonium nitrate fertilizer to mesotrione at a much higher weight ratio than Applicants' recited weight ratio of ammonium nitrate (i.e., component c) to at least one pesticide (i.e., component b);

(2) even when the teaching of Wichert is viewed most favorably to Examiner Brown's position, the teaching of Wichert still instructs one skilled in the art to utilize a minimum ratio of urea ammonium nitrate fertilizer to mesotrione of at least 0.53:1, which is substantially greater than the "less than or equal to 0.3:1" ratio as recited in Applicants' claimed invention;

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<sup>1</sup> Although the August 23, 2011 final Office Action states on page 4 that claims 1-5, 8-12 and 14-23 are rejected under 35 U.S.C. 103(a) in view of the combination of the teachings of Wichert, Cornes, Burke and Ferrett, the rejection appears to also rely on the teaching of Hudson, similar to the previous rejection in the March 15, 2011 non-final Office Action. See, for example, page 6, lines 11-16, page 8, line 14 to page 9, line 2, and page 12, line 17 to page 13, line 19 of the August 23, 2011 final Office Action.

(3) in addition to teaching away from Applicants' claimed invention as discussed above, the teaching of Wichert, alone or in combination with the art of record and a general understanding of the state of the art, fails to suggest to one skilled in the art the benefits of utilizing ammonium nitrate in a pesticidal concentrate at a ratio of less than or equal to 0.3:1 (i.e., ammonium nitrate to mesotrione) as recited in Applicants' claimed invention;

(4) the only motivation for (i) ignoring the specific teaching of Wichert directed to using a greater than 0.53:1 weight ratio of ammonium nitrate to mesotrione in a herbicidal composition and (ii) using Burke's disclosed insecticidal aerosol composition weight ratio for oleamide DEA to pyrethrum (e.g., a weight ratio of 0.30:1.25 disclosed in Example IV of Burke) in place of Wichert's greater than 0.53:1 weight ratio of ammonium nitrate to mesotrione has been gleaned from Applicants' original specification, not from the art of record;

(5) one skilled in the art, given the teaching of Wichert directed to herbicidal compositions comprising, *inter alia*, mesotrione and urea ammonium nitrate (UAN) fertilizer, would not have (i) sought out the teaching of Hudson directed to specific corrosion inhibitors for preventing corrosion due to UAN fertilizer compositions (e.g., specific corrosion inhibitors in the form of poly- and mono-functional carboxylic acids corrosion inhibitors), and (ii) subsequently utilized ammonium nitrate as a corrosion inhibitor for UAN fertilizer compositions instead of Hudson's poly- and mono-functional carboxylic acids corrosion inhibitors;

(6) one skilled in the art, given the teaching of Wichert directed to mesotrione formulations, would not have (i) sought out the teaching of Ferrett directed to methods of safening crops from the phytotoxic effects of glyphosate by utilizing specific ionic salts in combination with the glyphosate (see, Ferrett, paragraphs [0017]-[0018]), and (ii) subsequently incorporated one of Ferrett's disclosed ionic salt safeners (for glyphosate) into Wichert's mesotrione formulations;

(7) the only motivation for incorporating one of Ferrett's disclosed ionic salt safeners (for glyphosate) into Wichert's mesotrione formulations, as suggested by Examiner Brown, has been gleaned from Applicants' original specification, not from the art of record;

(8) the proposed combination of the teachings of Wichert, Cornes, Burke, Hudson and Ferrett actually teaches away from the use of ammonium nitrate as a corrosion inhibitor in a

pesticidal composition given that the teaching of Hudson (i) discloses specific corrosion inhibitors in the form of monocarboxylic acids, polycarboxylic acids, or mixtures thereof for preventing corrosion due to UAN fertilizer compositions, (ii) clearly discloses that ammonium nitrate (in UAN fertilizer compositions) causes corrosion, and (iii) due to the corrosive nature of ammonium nitrate, corrosion inhibitors in the form of monocarboxylic acids, polycarboxylic acids, or mixtures thereof should be utilized, not ammonium nitrate;

(9) even if the proposed combination of the teaching of Wichert with the teachings of Cornes, Burke, Hudson and Ferrett were deemed proper (and for at least the reasons discussed in Applicants' June 15, 2011 Request for Reconsideration and the reasons herein, Applicants submit that it is improper), the proposed combination of the teaching of Wichert with the teachings of Cornes, Burke, Hudson and Ferrett would still fail to teach or suggest an ammonium nitrate salt additive in a pesticide concentrate at a ratio of less than or equal to 0.3:1 (i.e., ammonium nitrate salt additive to mesotrione) as recited in Applicants' claimed invention; and

(10) even if the proposed combination of the teaching of Wichert with the teachings of Cornes, Burke, Hudson and Ferrett were deemed proper (and for at least the reasons discussed in Applicants' June 15, 2011 Request for Reconsideration and the reasons herein, Applicants submit that it is improper), the proposed combination of the teaching of Wichert with the teachings of Cornes, Burke, Hudson and Ferrett would teach or suggest a desired amount of urea ammonium nitrate salt so as to provide fertilizer properties/characteristics to the resulting composition.

In addition, Applicants note the following as a result of comments made in the August 23, 2001 final Office Action.

On page 8, lines 5-10, the August 23, 2001 final Office Action states the following in support of the proposed motivation for combining select portions of the teaching of Wichert with select portions of the teaching of Burke:

The claims would have been obvious because substitution of one pesticide for another pesticide would have yielded predictable results to one of ordinary skill in the art at the time of the invention. One of ordinary skill in the art would have been motivated to make such a substitution with the expectation of formulating a water-soluble-based aerosol composition that does not corrode the aerosol can during use.

Applicants note that the teaching of Wichert is directed to herbicidal compositions comprising fertilizers, while the teaching of Burke is directed to water-solvent-based aerosol insecticidal compositions. Applicants respectfully submit that one skilled in the art would not have been motivated to substitute a herbicide from Wichert's herbicidal composition comprising fertilizers for an insecticide in Burke's water-solvent-based aerosol insecticidal composition as suggested in the August 23, 2001 final Office Action. Again, the August 23, 2001 final Office Action appears to be relying on and guided by the disclosure and discovery of Applicants' original specification, not what is suggested in the prior art.

On page 9, lines 3-11, the August 23, 2001 final Office Action states the following in support of the proposed motivation for combining select portions of the teaching of Wichert with select portions of the teaching of Ferrett:

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Wichert et al. and Ferrett et al. and use an auxiliary in the form of an alkali metal or alkaline earth metal chloride. Ferrett et al. teach that salts such as sodium chloride can provide the cations necessary for safening a plant from phytotoxic injury caused by at least one N-phosphonomethyl-glycine when the salt is applied to a locus of a plant for which safening is desired. One of ordinary skill would be motivated to make this combination with the expected benefit of safening a plant from phytotoxic injury caused by mesitrione and/or mesitrione chelate compounds.

As discussed in Applicants' June 15, 2011 Request for Reconsideration, one skilled in the art, given the teaching of Wichert directed to mesotrione formulations, would not have (1) sought out the teaching of Ferrett directed to glyphosate compositions, and (2) incorporated one of Ferrett's disclosed ionic salt safeners, specific to glyphosate, into Wichert's mesotrione formulations with the "expected benefit of safening a plant from phytotoxic injury caused by mesitrione and/or mesitrione chelate compounds." There simply is no suggestion in the teaching of Ferrett, or the general state of the art, that sodium chloride would be a suitable safener for plants exposed to mesitrione and/or mesitrione chelate compounds as suggested in the August 23, 2011 final Office Action. Again, Applicants respectfully submit that the only motivation for incorporating one of Ferrett's disclosed ionic salt safeners (specific to glyphosate) into Wichert's mesotrione formulations, with no suggestion in the art of expected benefits, has been gleaned from Applicants' original specification, not from the art of record.

Further, as shown in Examples 1-2 of Applicants' original specification, with regard to the problem of providing corrosion inhibitors for mesotrione-containing compositions, the solution is not a straight forward task. As shown in Examples 1-2, seventeen potential corrosion inhibitors provide quite different levels of corrosion inhibition in mesotrione-containing compositions. As shown in Examples 1-2, performance of a given corrosion inhibition in mesotrione-containing compositions cannot be predicted.

Applicants were the first to discover that ammonium nitrate provides the highest level of corrosion inhibition in mesotrione-containing compositions when compared to other possible corrosion inhibitions. The art of record, including the general state of the art, failed to recognize ammonium nitrate as a possible corrosion inhibition, and especially failed to recognize ammonium nitrate as a possible corrosion inhibition in mesotrione-containing compositions. As discussed in the teaching of Hudson above, prior to Applicants' discovery as detailed in Applicants' original specification, the art only recognized ammonium nitrate as a corrosion contributor (i.e., in UAN fertilizer compositions as disclosed in Hudson).

For at least the reasons given above, it is respectfully submitted that the proposed combination of the teaching of Wichert with the teachings of Cornes, Burke, Hudson and Ferrett, alone or in combination with the general state of the art, fails to make obvious Applicants' claimed invention as embodied in independent claims 1, 15 and 20. Since claims 2-5, 8-12, 14, 16-19 and 21-23 depend from independent claims 1, 15 and 20 and recite further claim features, the proposed combination of the teaching of the teaching of Wichert with the teachings of Cornes, Burke, Hudson and Ferrett, alone or in combination with the general state of the art, also fails to make obvious Applicants' claimed invention as embodied in dependent claims 2-5, 8-12, 14, 16-19 and 21-23. Accordingly, withdrawal of this rejection is respectfully requested.

## II. Conclusion:

For at least the reasons given above, Applicants submit that claims 1-5, 8-12 and 14-23 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Brown believe that further action is necessary to place the application in better condition for allowance, Examiner Brown is respectfully requested to

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contact Applicants' representative at the telephone number listed below.

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

Respectfully submitted,  
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